

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

NOV 09 2012

Adama

OFFICE OF
MANAGING DIRECTOR

Rodney J. Stalvey
Waccamaw Broadcasting, LLC
185 Port Hampton Drive
Georgetown, SC 29440

Re: Waiver Request (Late Payment Penalty; 47
C.F.R. § 1.1164)
Licensees/Applicants: Waccamaw Broadcasting, LLC
Stations: WLMC-AM, WGTN-AM
Fee: Fiscal Year (FY) 2011 Regulatory Fees and
Late Payment Penalties
Date Request Filed: Aug. 2, 2012
Fee Control No.: RROG 11-00014504
Station WLMC-AM
Regulatory Fee Amount: \$ 600.00
25% Penalty: \$ 150.00
Adm collection charge \$ 50.00
DCIA Interest/Penalty: \$ 43.85
Station WGTN-AM
Regulatory Fee Amount: \$ 525.00
25% Penalty: \$ 131.25
Adm collection charge \$ 50.00
DCIA Interest/Penalty: \$ 38.37
Total Regulatory Fees Due: \$1,588.47

Dear Mr. Stalvey:

This responds to Licensee's *Request*¹ for waiver of the statutory penalty, interest and penalty charges, and collection charges (*penalties*) that accrued because Licensee did not pay its Fiscal Year (FY) 2011 regulatory fees, and which remain unpaid. For the reasons stated herein, we both dismiss and deny the *Request*.

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,² and when the required payment is received late or it is incomplete, to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."³

¹ Letter from R. J. Stalvey, President, Waccamaw Broadcasting, LLC, 185 Port Hampton Drive, Georgetown, SC 29440 to FCC, Revenue and Receivables Operation Group, 455 12th Street, S.W., Washington, DC 20554 (Jul. 26, 2012(rec'd. Aug. 2, 2012)(*Request*).

² 47 U.S.C. §159(a)(1); 47 C.F.R. § 1.1151.

³ 47 U.S.C. §159(c)(1); 47 C.F.R. § 1.1164.

Specifically, “[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner.”⁴ Thereafter, from the date of delinquency, as required by the law,⁵ interest, penalties, and administrative charges for collection accrue.

For FY 2011, the deadline for paying regulatory fees was September 16, 2011.⁶ Because Licensee failed to pay its fees on or before that date, the 25% penalty and other charges accrued on each delinquent fee, and Licensee is delinquent.⁷ As required by the law,⁸ we dismiss the *Request*. Furthermore, under section 1.1910 of our rules,⁹ until Licensee pays all debts or makes other satisfactory arrangements for payment, we are required to withhold action on any application filed by Licensee. However, even if Licensee had paid the debt, we must deny the *Request*.

The consequences for not paying the fees when due are not excused or mitigated by Licensee’s assertion that “[i]t is very difficult to expect [Licensee] to remember to check with the Commission each year when [the] fees are due[, and] it is [unfair] to assume that all station owners have the ability to remember when [the] fees are due. [Thus, Licensee] would appreciate it ... if the Commission would reconsider mailing all regulatory notices to me in the future and waive all penalties due.”¹⁰ These comments are not legal grounds or clear mitigating circumstances to waive collection of the penalties and accrued charges. The Commission has repeatedly held that “[l]icensees are expected to know and comply with the Commission’s rules and regulations and will not be excused for violations thereof, absent clear mitigating

⁴ 47 C.F.R. § 1.1164.

⁵ 31 U.S.C. § 3717; 47 C.F.R. §§ 1.1164(f)(4), 1.1940; In The Matter Of Implementation Of Section 9 Of The Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd. 5333, 5354 ¶ 65 (1994) (“Included in the recovery of any delinquent fee will be an assessment of interest on the debt due, a penalty for nonpayment, and the allowable cost incurred due to the federal government in the collection process.”); In The Matter Of Assessment And Collection Of Regulatory Fees For Fiscal Year 2010, *Report and Order*, 25 FCC Rcd. 9278, 9297-98 ¶ 54 (2010) (“A late payment penalty of 25 percent of the unpaid amount of the required regulatory fee will be assessed on the first day following the deadline date for filing of these fees. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including those set forth in section 1.1910 of the Commission’s Rules and in the Debt Collection Improvement Act of 1996 (“DCIA”). We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and section 1.1940(d) of the Commission’s rules. These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. In case of partial payments (underpayments) of regulatory fees, the licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or not timely paid, then the 25 percent late charge penalty (and other charges and/or sanctions, as appropriate) will be assessed on the portion that is not paid in a timely manner.”).

⁶ See FY 2011 Regulatory Fees Due No Later Than September 14, 2011, Eastern Time, *Public Notice*, DA 11-1420 (Aug. 17, 2011); FY 2011 Regulatory Fee Deadline Is Extended To 11:59 PM ET, September 16, 2011, *Public Notice*, DA 11-1559 (Sep. 15, 2011).

⁷ 31 U.S.C. § 3717(e); 31 C.F.R. § 901.9; 47 C.F.R. § 1.1940.

⁸ 47 C.F.R. § 1.1166(c) provides: “Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.” See Assessment and Collection of Regulatory Fee for Fiscal Year 2011, *Report and Order*, 26 FCC Rcd 10812, 10819, ¶ 17 (2011)(“ if a request for deferral is not supported by documentation of financial hardship, it will be denied, and an associated petition for waiver or reduction will be dismissed”).

⁹ 47 C.F.R. § 1.1910.

¹⁰ *Request*.

circumstances.”¹¹ The absence of a reminder notice from the FCC is not an excuse. Indeed, beginning in 2009, the Commission provided ample notice that it would not be sending paper pre-bills to regulatees.

On May 14, 2009, the Commission proposed to mandate electronic filing of regulatory fee information through the agency’s Fee Filer system.¹² The Commission explained that, “[c]onsistent with [its] proposal to require mandatory use of Fee Filer ... pre-bill information would be loaded into Fee Filer for viewing, but would not be mailed directly to the licensee via surface mail.”¹³ On July 31, 2009, the Commission released its order adopting these proposals.¹⁴ In that order, the Commission advised regulatees that “because all pre-bills will be loaded into Fee Filer, once Fee Filer becomes operational, this will be the signal by which licensees can view their pre-bill information online.”¹⁵ The Commission issued a public notice informing regulatees that use of Fee Filer was mandatory in FY 2009 and that “regulatory fee bills will no longer be mailed to the regulatee, but can be viewed by logging on the Fee Filer.”¹⁶ On September 2, 2009, the Commission released a third public notice reiterating that **“HARDCOPY BILLS WILL NO LONGER BE MAILED BY THE FCC.”**¹⁷

Similarly, the Commission’s final order on the FY 2010 regulatory fees reaffirmed that regulatees should “check[] the Commission’s website periodically beginning in July” in order to “ascertain the fee due date, and receive instructions on how to access Fee Filer, view their bill, and make a fee payment.”¹⁸ This notification was part of the Commission’s increased effort to notify licensees that hardcopy bills will no longer be mailed.¹⁹

Every licensee is obliged to make the fee payment by the deadline. In such cases, neither the statute nor the Commission’s regulations contemplates a waiver of or reduction in the late payment penalty based on the amount of time after the deadline within which the regulatee satisfies its payment obligations; indeed, the penalty for late payment applies even to situations where the deadline is missed by a short period of time.²⁰ Further, although the Commission has waived late fees on a showing of good cause, neither the statute nor the Commission’s regulations contemplates a waiver of or reduction in the late payment penalty based on the amount of time after the deadline within which the regulatee satisfies its payment obligations.

¹¹ See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970); see also *NextGen Telephone* (OMD, Apr. 22, 2010); *Istel, Inc.* (OMD, Apr. 22, 2010).

¹² Assessment and Collection of Regulatory Fees for Fiscal Year 2009, *Notice of Proposed Rulemaking and Order*, 24 FCC Rcd 5966, 5972 ¶ 16 (2009).

¹³ *Id.* at 5973 ¶ 20.

¹⁴ Assessment and Collection of Regulatory Fees for Fiscal Year 2009, *Report and Order*, 24 FCC Rcd 10301, 10307-09 ¶¶ 18-27 (2009) (*FY 2009 Regulatory Fees NPRM*).

¹⁵ *Id.* at 10309 ¶ 26.

¹⁶ *Fee Filer Mandatory for FY 2009 Regulatory Fees*, *Public Notice*, 24 FCC Rcd 10893 (Aug. 21, 2009).

¹⁷ Payment Methods and Procedures for Fiscal Year 2009 Regulatory Fees, *Public Notice*, 24 FCC Rcd 11513, 11514 (2009) (emphasis in original).

¹⁸ Assessment and Collection of Regulatory Fees for Fiscal Year 2010, *Report and Order*, 25 FCC Rcd 9278, 9291 ¶ 37 (2010).

¹⁹ See Assessment and Collection of Regulatory Fees for Fiscal Year 2010, *Notice of Proposed Rulemaking*, 25 FCC Rcd 3918, 3923 ¶ 12 (2010).

²⁰ See *XO Communications, LLC* (OMD, Nov. 10, 2010).

As we explained, the penalty required by 47 U.S.C. § 159(c)(1) is not limited to situations where the failure to pay was knowing or willful. If it is to be waived, it is "only in the most extraordinary circumstances,"²¹ which are not described in Licensee's situation. Thus, under the law, we must deny the *Request*.

Payment of \$1,588.47, which is Licensee's FY 2011 regulatory fee plus the 25% penalty, accrued interest and penalty, and administrative charges of collection, must be received, together with a Form 159 (copy enclosed), within 30 days of the date of this letter. Moreover, as noted above, because Licensee is delinquent in paying the fee, until the full amount due is paid, we are required to withhold action on any application filed or pending by Licensee. ²² If full payment of that amount is not received by that date, additional interest, penalties, and charges required by 31 U.S.C. § 3717(e) will continue to accrue from the date of this letter. Furthermore, under the law,²³ the Commission will initiate collection proceedings against Licensee. If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Stephens", written over a horizontal line.

Mark Stephens
Chief Financial Officer

Enclosure

²¹ *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

²² 47 C.F.R. § 1.1910.

²³ See 47 C.F.R. § 1.1901, *et seq.*



NEWTALK
WGTN
1400 AM STEREO

Waccamaw Broadcasting, LLC

185 Port Hampton Drive

Georgetown, South Carolina 29440

(843) 546-1400

www.wgtnradio@aol.com

July 26, 2012

**Federal Communications Commission
Revenue and Receivables Operation Group**

445 Twelfth Street S.W., Room 1-A821
Washington, D.C. 20554

Re: Demand letter for
Radio Station WLMC-AM
Facility Identification number: 3900
BRF R 11R003900 1
Radio Station WGTN-AM
Facility identification number 23899
BRF R11R023899 1

To Whom It May Concern:

I recently received two separate letters demanding payments for both my Radio Stations WGTN-AM & WLMC-AM for non-payment of 2011 Regulatory fees. It's my understanding that the Commission has changed it's way of notifying licensees and no longer mails notices for these fees when due. It is very difficult to expect me to remember to check with the Commission each year when these fees are due. Last year, I was very busy with my License renewal and did not think to check with the Commission about these fees. It's very un-fair to assume that all station owners have the ability to remember when these fees are due. In all my years of doing business I have never had a Government Agency assume that I would know when to pay a fee. I would appreciate it very much if the Commission would reconsider mailing all regulatory notices to me in the future and waive all penalties due. This year has been very trying financially, and the Commission is well aware of how to contact me and I don't understand why the Commission allowed this much time to pass without contacting me.

Sincerely,

A handwritten signature in black ink, appearing to read "R.J. Stalvey".

R.J. Stalvey
President,
Waccamaw Broadcasting, LLC